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Scott A. Stinebruner  
Wood, Herron & Evans, L.L.P.  
2700 Carew Tower  
441 Vine Street  
Cincinnati, OH 45202-2917

EXAMINER

NGUYEN, THU HA T

ART UNIT	PAPER NUMBER
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2155

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DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/697,398

Applicant(s)

MILLER ET AL.

Examiner

Thu Ha T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 3,14-15, and 18 is/are allowed.
- 6) ☒ Claim(s) 1,4,7-12,16, 19 and 21-24 is/are rejected.
- 7) ☐ Claim(s) 2,5,6,13,17 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Claims 1-24 are presented for examination.

***Response to Arguments***

2. Applicants' arguments filed February 17, 2004 have been fully considered but they are not persuasive because of the following reasons:

3. Examiner provided the provisional applications from which Kampe et al. claims priority as attached herein (see PTO-892).

4. Applicants argue Kampe does not teach or suggest claim 1 as recites "locally determining within the local member whether the local member is a subgroup leader for a subgroup". In response to Applicants' argument, examiner asserts that Kampe does teach the step of determining locally within the local member whether the local member is a subgroup leader for a subgroup as shown in paragraph 0041, also Kampe 's provisional applications shown in section 2.2 (page no. 3, Provisional application # 60/201,210), and (page no. 7, Provisional application # 60/201,099). Within a group of nodes, determining the leader, if the leader fails, another member will becomes a leader.

5. Applicants argue that Kampe fails to disclose or suggest that the two groups form subgroups of a common group. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the two groups form subgroups of a common group) are not recited in the rejected claim(s). Although the claims are interpreted in

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light of the specification, limitations from the specification are not read into the claims.

See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

6. Applicants argue Kampe does not teach or suggest limitation as recites in claim 12, "a method of processing a request in a clustered computer system to organize a plurality of members into a group, the plurality of members partitioned into a plurality of subgroups". In response to applicant's arguments, the recitation the plurality of members partitioned into a plurality of subgroups has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Moreover, Kampe teach the function of determining the leader of one subgroup, it also has a capability to do function of determining the leader of more than one subgroups.

7. As a result, cited prior art does disclose a system and method of processing a request in a clustered computer system to organize a plurality of members into a group in a local member from the plurality of members, as broadly claimed by the Applicants. Applicants clearly have still failed to identify specific claim limitations that would define a clearly patentable distinction over prior art.

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8. Therefore, the examiner asserts that cited prior art teaches or suggests the subject matter broadly recited in independent claims 1, 12, 16, 22, and 23. Claims 4, 7-11, 19, 21 and 24 are also rejected at least by virtue of their dependency on independent claims and by other reasons set forth in the previous office action [see paper no. 4]. Accordingly, claims 1, 4, 7-12, 16, 19, and 21-24 are respectfully rejected.

9. Claims 3, 14-15 and 18 are allowed.

10. Claims 2, 5-6, 13, 17, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

12. Claims 1, 4, 8-9, 11, 12, 16, 19, and 21-24 are rejected under 35 U.S.C. § 102(e) as being anticipated by **Kampe et al.**, (hereinafter Kampe) U.S. Publication No. **2003/0041138**.

13. As to claim 1, **Kampe** teaches the invention as claimed, including a method of processing a request in a clustered computer system to organize a plurality of members into a group, the method comprising, in a local member from the plurality of members:

(a) locally determining within the local member whether the local member is a subgroup leader for a subgroup with which the local member is associated (abstract, figures 1-2, 4, paragraphs 0011-0014, paragraphs 0058-0063); and

(b) if so, transmitting group data on behalf of the subgroup (abstract, figure 4, paragraph 0031, paragraphs 0040-0047, paragraphs 0058-0063).

14. As to claim 4, **Kampe** teaches the invention substantially as claimed, further comprising, in the local member: (a) sending an acknowledgment message during an acknowledgment round (paragraphs 0006-0007, paragraph 0031, paragraphs 0085-0090); (b) waiting for receipt of an acknowledgment message from each of the plurality of members (paragraphs 0006-0007, paragraph 0031); and (c) processing the group data after receipt of acknowledgment messages from each of the plurality of members (paragraphs 0085-0093).

15. As to claim 8, **Kampe** teaches the invention substantially as claimed, wherein locally determining within the local member whether the local member is the subgroup leader includes comparing a unique characteristic of the local member with those of the other members associated with the subgroup (paragraphs 0078-0079).

16. As to claim 9, **Kampe** teaches the invention substantially as claimed, wherein the unique characteristic of the local member includes a member name, and wherein locally determining whether the local member is the subgroup leader includes determining whether the local member is the lowest named member among the members associated with the subgroup (paragraphs 0078-0079).

17. As to claim 11, **Kampe** teaches the invention substantially as claimed, wherein the request comprises a merge request, wherein the plurality of members is partitioned into a plurality of subgroups, each subgroup associated with a partition, and each partition associated with a subset of the plurality of the members (abstract, figure 2, paragraph 0035-0037, 0069).

18. As to claim 12, **Kampe** teaches the invention substantially as claimed, including a method of processing a request in a clustered computer system to organize a plurality of members into a group, the plurality of members partitioned into a plurality of subgroups, the method comprising:

(a) transmitting group data on behalf of each subgroup (abstract, figure 4, paragraph 0031, 0040-0047, 0058-0063); and

(b) locally tracking within each member whether the group data for the subgroup associated with such member has been transmitted (abstract, figure 4, paragraphs 0011-0014, 0031, 0040-0047, 0052, 0058-0063, 0065).

19. As to claim 16, **Kampe** teaches the invention substantially as claimed, including an apparatus, comprising:

(a) a memory (figures 1-3, paragraphs 0040- 0045); and

(b) a program resident in the memory, the program configured to process a request in a clustered computer system to organize a plurality of members into a group by locally determining for a local member among the plurality of members whether the local member is a subgroup leader for a subgroup with which the local member is associated, and if so, transmitting group data on behalf of the subgroup (abstract, figures 1-3, paragraphs 0011-0014, 0040-0045, 0058-0063).

20. As to claim 19, **Kampe** teaches the invention substantially as claimed, wherein the program is further configured to send an acknowledgment message during an acknowledgment round, wait for receipt of an acknowledgment message from each of the plurality of members, and process the group data after receipt of acknowledgment messages from each of the plurality of members (paragraphs 0006-0007, 0031, 0085-0093).



21. As to claim 21, **Kampe** teaches the invention substantially as claimed, wherein the program is configured to locally determine whether the local member is the subgroup leader by determining whether the local member is a lowest named member among the members associated with the subgroup (paragraphs 0078-0079).

22. As to claim 22, **Kampe** teaches the invention substantially as claimed, including a clustered computer system, comprising:

(a) a plurality of nodes coupled to one another over a network (abstract, figures 1-2);

(b) a plurality of member jobs defining a group and configured to be executed by at least one of the plurality of nodes (abstract, figures 1-3, paragraphs 0011-0014, 0040-0045, 0058-0063); and

(c) a program configured to be executed by at least one of the plurality of nodes to process a request: received by a member job from the plurality of member jobs to add another member job to the group by locally determining for the member job whether the member job is a subgroup leader for a subgroup with which the member job is associated, and if so, transmitting group data on behalf of the subgroup (abstract, figures 1-3, paragraphs 0011-0014, 0040-0045, 0058-0063).

23. As to claim 23, **Kampe** teaches the invention substantially as claimed, including a program product, comprising: (a) a program configured to process a request

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in a clustered computer system to organize a plurality of members into a group by locally determining for a local member among the plurality of members whether the local member is a subgroup leader for a subgroup with which the local member is associated, and if so, transmitting group data on behalf of the subgroup (abstract, figures 1-3, paragraphs 0011-0014, 0040-0045, 0058-0063); and (b) a signal bearing medium bearing the program (figures 1-3, paragraphs 0040- 0045).

24. As to claim 24, **Kampe** teaches the invention substantially as claimed, wherein the signal bearing medium includes at least one of a recordable medium and a transmission medium (figures 1-3, paragraphs 0040- 0045).

### **Claim Rejections - 35 USC § 103**

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claim 7 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over **Kampe et al.**, (hereinafter Kampe) U.S. Publication No. **2003/0041138**.

27. As to claim 7, **Kampe** teaches the invention substantially as claimed, wherein sending the acknowledgment message is performed subsequent to the local member transmitting the group data on behalf of the subgroup if the local member is determined to be the subgroup leader, the method further comprising bypassing the transmitting of the group data by the local member if the local member is determined not to be the subgroup leader (paragraph 0052, paragraph 0067).

28. Claim 10 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over **Kampe et al.**, (hereinafter **Kampe**) U.S. Publication No. **2003/0041138**, in view of **Moiin** U.S. Patent No. **6,108,699**.

29. As to claim 10, **Kampe** teaches the invention substantially as claimed, wherein the request comprises a join request, wherein the plurality of members is partitioned into first and second subgroups (abstract, paragraphs 0052, paragraphs 0061-0067). However, **Kampe** does not explicitly teach the first group associated with existing members of the group, and the second subgroup associated with new members to be added to the group responsive to the join request. **Moiin** teaches the first group associated with existing members of the group, and the second subgroup associated with new members to be added to the group responsive to the join request (abstract, col. 2 lines 10-38). It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention was made to have the request comprises a join request, wherein the plurality of members is partitioned into first and second

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subgroups as taught by **Kampe** to combine the teaching of **Moiin** to have the result of first group associated with existing members of the group, and the second subgroup associated with new members to be added to the group responsive to the join request in order to enhance and improve the performance, reliability and fault tolerant of a distributed computer system.

### **Conclusion**

30. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Ha Nguyen, whose telephone number is (703)

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305-7447. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T. Alam, can be reached at (703) 308-6662.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications.

Thu Ha Nguyen

April 28, 2004

  
**HOSAIN ALAM**  
**SUPERVISORY PATENT EXAMINER**